

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH W. HIGGINS,

Defendant.

4:19MJ3068

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS**

Pending before me is a Findings and Recommendations that the defendant should be involuntarily administered antipsychotic medications by a Federal Medical Center because he is incompetent and there is a substantial probability he will be restored to competency if he receives the medications. I conducted oral argument with counsel.

After de novo review, I find that Judge Zwart's F&R should be adopted as the evidence is overwhelming (indeed, beyond a reasonable doubt) that the defendant is not competent but there is a substantial probability that he may be restored to competency if he takes or is given the required medications. In coming to this conclusion, I have not relied on statements allegedly made by a defense psychologist agreeing with the FMC evaluators. Since his statement was not admitted as evidence, it was error to consider it. But the error was error was harmless beyond a reasonable doubt.

IT IS ORDERED that the Findings and Recommendations (filing 61) are adopted and the Objections (filing 63) are denied. A separate order will be issued for use by the Bureau of Prisons regarding the involuntary administration of medications.

October 5, 2020.

BY THE COURT:

Richard G. Kopf

Richard G. Kopf
Senior United States District Judge